



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,019	07/15/2003	Christopher T. Dohl	33979	8613
23589	7590	08/18/2006	EXAMINER	
HOVEY WILLIAMS LLP 2405 GRAND BLVD., SUITE 400 KANSAS CITY, MO 64108			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,019

Applicant(s)

DOHL ET AL.

Examiner

Lien T. Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claims 1-8, 20-27, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsland (US2003/0091698A1) in view of Yajima et al (6106881), Chen et al (5116630)and Hamada et al (5082672).

Marsland discloses wheat-containing dough and bakery products such as bagel, breads, cookies, doughnuts, pastries etc... The products comprise a proteinaceous ingredient which is a modified non-viscoelastic wheat protein isolate in amount from about 5-50% and proteinaceous ingredients selected from the proteins cited in paragraph 0010 or other raw materials having a protein content of greater than 25%. The products include fat, other carbohydrates, emulsifying agent, flavorings, and leavening agents. The food products may comprise greater than 25% protein. The second protein may be in amount of 14%. (see paragraphs 0066, , 0015, 0018 and the examples)

Marsland does not disclose the proteinaceous ingredients selected from the group as claimed, the chemical leavening agent as claimed and the product being yeast leavened.

Yajima et al disclose fractionated wheat protein such as gliadin and glutenin; the protein is added to bread or wheat confectionery to prevent aging and denaturation during freezing. (see col. 2 lines 10-30)

Chen et al disclose a process for denaturing wheat gluten. The process renders the gluten to be less digestible by pepsin, trypsin and other microbial proteinase and improves the elastic properties and therefore the workability of the paste in which the denatured gluten is added. (see column 2 lines 5-23)

Hamada et al disclose deamidated wheat gluten. The deamidation process allows the production of food proteins having improved functionality to be used in a wide variety of food applications. (see col. 2 lines 1-15)

Marsland discloses other protein materials can be used as long as it has a protein content of greater than 25%. Thus, it would have been obvious to one skilled in the art to use any of the protein taught by Yajima et al, Chen et al and Hamada et al to obtain the benefits taught by the prior art and also the requirement that it has a protein content greater than 25% because all of the protein disclosed are wheat protein which have a protein content of 75-80%. It would have been obvious to use any known chemical leavening agent depending on the product made; all the agents claimed are well known. It would have been obvious to use yeast depending on the type of baked product. For instance, bagel, pizza dough and many types of bread are typically leavened by yeast .

Claims 9-19,28-38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsland in view of Yajima et al (6106881), Chen et al (5116630)and Hamada et al (5082672) as applied to claims 1-8, 20-27, 39 above, and further in view of Haralampu.

Marsland does not teach adding resistant starch of the types claimed, the use of wheat gluten as cited in claims 13,32 and the amount of protein in the dough as cited in claims 16, 35 .

Haralampu et al disclose a granular resistant starch; the starch is chemically modified. The resistant starch is used in a variety of food such as cookies, breads,

Art Unit: 1761

brownies, snacks etc.. The resistant starch is characterized by a total fiber content in the range of from about 20-50% by weight. The starch is used in amounts ranging from about 1-15%. The starch is used in place of sugar, flour, and/or fat to lower calorie and fat content and the starch is used to increase fiber content (see col. 2 lines 53-64, col. 4, col. 6 lines 29-57).

Marsland discloses to use mixture of protein ingredients; the protein includes gluten. Thus, it would have been obvious to use vital wheat gluten because it is a well known gluten protein. It would have been obvious to vary the amount of protein to obtain any desired amount of protein depending on the protein content wanted for the product. Marsland discloses the carbohydrate sources include fiber. Thus, it would have been obvious to one skilled in the art to add the resistant starch taught by Haralampu et al as a source of fiber to obtain the benefit taught by Haralampu et al.

Applicant's arguments with respect to claims 1-40 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

Art Unit: 1761

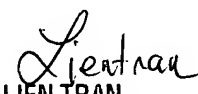
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wednesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 16, 2006


LIEN TRAN
PRIMARY EXAMINER
